IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1275 of 2006
TO
FIRST APPEAL No. 1277 of 2006
With
FIRST APPEAL No. 1279 of 2006
to
FIRST APPEAL NO. 1281 of 2006
With
FIRST APPEAL Nos. 1283 of 2006,
1285 of 2006,
1287 / 2006 to 1296/2006
and
FIRST APPEAL NO. 1298 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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GOVERNMENT OF GUJARAT & 1 - Appellant(s)
Versus
NIRMALABEN B. PATEL & 2 - Defendant(s)

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Appearance :
FIRST APPEAL NOS. 1275/2006 TO 1277/2006 AND FIRST APPEAL NOS.1279/2006 TO 1281/2006 AND 1283/2006

MR SS SHAH, GP for Appellants
None for Defendant(s) : 1 - 2.
MR KM SHETH for Defendant(s) : 1.2.1, 1.2.2,1.2.3 - 2,2.2.2
RULE NOT RECD BACK for Defendant(s) : 3,
FIRST APPEAL NOS. 1285/2006,1287/2006 TO 1291/2006

MR LR POOJARI, AGP for Appellants
None for Defendant(s) : 1 - 2.
MR KM SHETH for Defendant(s) : 1.2.1, 1.2.2,1.2.3 - 2,2.2.2
RULE NOT RECD BACK for Defendant(s) : 3,

FIRST APPEAL NOS. 1292/2006 TO 1294/2006
MR TANUJA KACHCHHI, AGP for Appellants
None for Defendant(s) : 1 - 2.
MR KM SHETH for Defendant(s) : 1.2.1, 1.2.2,1.2.3 - 2,2.2.2
RULE NOT RECD BACK for Defendant(s) : 3,

FIRST APPEAL NOS. 1295/2006,1296/2006, AND 1298/2006
MR KRINA P CALLA, AGP for Appellants
None for Defendant(s) : 1 - 2.
MR KM SHETH for Defendant(s) : 1.2.1, 1.2.2,1.2.3 - 2,2.2.2
RULE NOT RECD BACK for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 23/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. These appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 are directed against the common judgment and award dated April 23, 2003 rendered by the learned 2nd Joint Civil Judge (S.D.), Vadadora in Land Reference Case Nos. 2/94 to 26/94 by which the claimants have been awarded

additional amount of compensation at the rate of Rs. 15.40 ps. per Sq.Mtr. for their acquired lands, over and above the compensation paid to them by the Special Land Acquisition Officer at the rate of Rs. 3.60 ps. per Sq.Mtr. by his award dated March 15, 1993.

2. The Executive Engineer, Narmada project – 1/2, Chhani Jakat Naka, Vadodara proposed to the State Government to acquire lands of Village – Ranu, Taluka – Padra, District – Vadodara for the public purpose of construction of the Jambusar Canal under the Narmada project. On perusal of the said proposal, the State Government was satisfied that the lands of Village – Ranu were likely to be needed for the said public purpose. Therefore, Notification under Section 4 of the Act was issued which was published in the Official Gazette on January 04, 1992. Land owners were served with the notices under Section 4(1) of the Act. They opposed the proposed acquisition. After considering their objections,

a report under Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the said report, the State Government was satisfied that the lands of Village – Ranu which was specified in the Notification published under Section 4 of the Act were needed for public purpose of construction of the Jambusar Canal under the Narmada project. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette on March 20, 1992. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 40/- per Sq.Mtr. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated March 15, 1993 offered compensation to the claimants at the rate of Rs. 3.60 ps. per Sq.Mtr. The claimants were of the opinion that the offer

of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act, requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Vadodara, which were registered as Land Reference Case Nos. 2/94 to 26/94.

3. On behalf of the claimants two witnesses were examined i.e. (1) Mr. Piyushbhai Bhikabhai Patel at Exhibit – 15 and (2) Mr. Suryakant Shanabhai Patel at Exhibit – 16. Witness – Piyushbhai stated before the Court that the lands acquired were even as well as irrigated and highly fertile. It was claimed by the said witness that each claimant was able to raise crops of cotton, tuver, vegetables, tobacco, millet, rice, wheat etc. To support this claim, the witness produced 7/12 extracts relating to

the acquired lands at Exhibit – 17 to Exhibit – 38. The witness also produced certificate issued by Talati of the village at Exhibit – 39 indicating that different crops as mentioned by the said witness were being raised on the lands acquired. The witness further mentioned before the Court that in all there were 75 Wells situated in his village as well as 36 Tube-Wells, from which claimants were getting necessary water for the purpose of irrigation. The witness asserted that each claimant was able to raise more than two crops in a year because of easy availability of water in abundance. According to this witness during the summer of 1991 – 1992, the claimants had raised crops of millet and on an average, each claimant was able to raise 50 *Maunds* of millet per Vigha. The witness further claimed before the Court that in the year 1991-92, the price of millet per quintal was Rs. 425/. The witness also mentioned before the Court during rainy season of the year 1991-92, the claimants had raised Brinjals and that each

claimant was able to raise 200 *Maunds* of Brinjals per Vigha. The witness asserted that in the year 1992-92, the price of brinjals was Rs. 22 to Rs. 25 per quintal. In order to establish that the prices of millet and brinjals were the same as claimed by him, the said witness produced certificate issued by the Agricultural Produce Market Committee, Padra at Exhibit – 41. It was stated by the said witness that the Village – Ranu was situated at a distance of 6 K.M. from village – Padra which is head-quarter of Padra Taluka and that all facilities such as light, water, telephone, post, private dispensary, primary school, high school, factories etc. were available in the village. This witness was cross-examined on behalf of the appellants, but nothing substantial could be elicited.

4. Another witness i.e. Mr.Suryakant Shanabhai Patel, examined at Exhibit – 16 mentioned in his testimony before the Court that the claimants had also grown crops of wheat in

the winter of 1991 – 92 and that each claimant was able to get crop of 45 *Maunds* to 50 *Maunds* of wheat per Vigha. According to this witness the price of the wheat was Rs. 450/- per quintal. The witness further mentioned that some of the claimants had also raised crop of Tuver in the rainy season of the year 1991-92 and those claimants were able to get crop of 50 *Maunds* per Vigha, average price of which was Rs. 1100/- per quintal. The witness asserted that the claimants were also entitled to compensation for Wells and Ordi constructed on the lands acquired. This witness was also cross-examined by the appellants but his assertions could not be demonstrated to be untrue.

5. On behalf of the appellants Smt. Ashaben Rajiv Shah- Special Land Acquisition Officer (Narmada Project), Unit – 5, Vadodara was examined at Exhibit – 71. The witness asserted before the Court that in view of the materials produced before the Special Land Acquisition

Officer, the offer of compensation made to the claimants should not be considered to be inadequate. It was stated by the said witness that no case was made out by the claimants for grant of enhanced compensation. In her cross-examination by the claimants, the witness admitted that she had not rendered the award in the instant case under Section 11 of the Act and that she was deposing before the Court on the basis of official record available.

6. On appreciation of evidence adduced by the parties, the Reference Court held that it was proved by the claimants that the compensation awarded to them by the Special Land Acquisition Officer was inadequate and unfair. The Reference Court noticed that the enhanced compensation was not claimed by the claimants either on the basis of comparable sale instances or on the basis of the previous award of the Reference Court but was claimed on yield basis. The discussion made by the Reference Court in Paragraph 11 of the

impugned award makes it very clear that the Reference Court took into consideration the total income derived by the claimants from the sale of four crops and held that each claimant was able to earn income of Rs. 20,400/- per year. The Reference Court was of the view that this was not the average income earned by the claimants and therefore, 10% should be deducted therefrom to determine the average income. The Reference Court deducted 10% from Rs.20,400/- and held that the average income derived by each claimant from the sale of four crops was Rs. 18,360/-. The Reference Court held that the assertion that the claimants were able to raise four crops in a year did not inspire confidence but it was satisfactorily proved that each claimant was able to grow two crops in a year and therefore, average income of Rs. 18,360/- was required to be divided by two. After dividing the average income by two, the Reference Court held that the total income derived by each claimant from the sale of Agricultural produces per Vigha during 1991-92

was Rs. 9180/-. The Reference Court noticed the settled law laid down by the Supreme Court in catena of reported decisions for the purpose of determining market value of the agricultural lands acquired, on yield basis and held that 50% should be deducted towards cost of cultivation. Accordingly, the Reference Court deducted 50% from Rs. 9180/- and held that the net income per Vigha derived by each claimant from sale of two crops in a year was Rs. 4590/-. Thereafter, the Reference Court, applied multiplier of 10 to arrive at the income derived by the claimants on yield basis. In ultimate analysis, the Reference Court held that the claimants are entitled to Rs. 19.12 paise per Sq.Mtr. as compensation by the judgment and award dated April 23, 2003, giving rise to the above numbered appeals.

7. This Court has heard Mr. L.R.Poojari, learned Assistant Government Pleader for the appellants and Mr. Kamlesh M. Sheth, learned Counsel for the claimants at length and in great

detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. It is well settled that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification issued under Section 4(1) of the Act and the methods of valuation are: (1) opinion of experts: (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. As noticed earlier in these cases, the claimants have not produced any sale instance in support of their claim for enhanced compensation nor relied upon the previous award of the

Reference Court to substantiate their claim that they were entitled to compensation at the rate of Rs. 42/- per Sq.Mtr. However the claimants claimed enhanced compensation on the basis of income derived by them from the sale of agricultural produces i.e. on yield basis.

9. The evidence of witnesses – Piyushbhai Bhikabhai Patel recored at Exhibit – 15 and that of Suryakant Shanabhai Patel recorded at Exhibit – 16 makes it very clear that it was not established by the claimants that each claimant was able to raise four crops in a year. Therefore, this Court is of the opinion that the Reference Court was not justified in taking into consideration the income of four crops i.e. Millet, Brinjals, Wheat and Tuver as stated by the witness for the purpose of determining the market value of the lands acquired in the instant cases. However, what was done by the Reference Court was that after ascertaining the total income from the four crops, the said income was

divided by 10% in order to ascertain average income. After checking up law on the point, the learned Assistant Government Pleader has fairly stated at the Bar the exercise undertaken by the Reference Court of deducting 10% from the total income is not sustainable. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion that it is fairly established by the claimants that each claimant was able to take two crops i.e. Millet and Brinjal in the year 1991-92. The evidence adduced by the claimants would indicate that each claimant was able to raise 8 quintals of Millet, average price of which was Rs. 425/- per quintal in the year 1991-92, and each claimant was also able to raise 30 quintal of Brinjal average price of which was Rs. 200/- per quintal in the said year. The claim advanced by the claimants regarding price of those crops stands corroborated by what is mentioned in the certificate Exhibit – 41 issued by the concerned Agricultural Produce Market Committee. It may be mentioned that no rebuttal

evidence was produced by the appellants at all. Therefore, the evidence led by the claimants regarding price of millet and brinjal in the year 1991-92 will have to be accepted by the Court. If the income derived by the claimants from the sale of two crops i.e. Millet and Brinjals is considered, the total income per year per Vigha comes to Rs. 9200/-. As held by the Supreme Court in catena of reported decisions 50% will have to be deducted towards cost of cultivation from the said figure. If 50% is deducted towards cost of cultivation, the net income derived by each claimant from the sale of two crops would come to Rs. 4600/-. Again as per the law laid down by the Supreme Court, multiplier of 10 will have to be applied and if the said multiplier is applied, the income derived by each claimant per year per Vigha would be Rs. 46,000/-. In order to get the price of the lands per Sq.Mtr., the said figure will have to be divided by 2400/-, which indicates that the claimants would be entitled to get compensation at the rate of Rs. 19.16 paise

per Sq.Mtr. On re-appreciation of the evidence adduced by the parties, this Court is of the opinion though correct principles were not applied, just amount of compensation has been determined by the Reference Court payable to the claimants and no case is made out to interfere with same in the instant appeals. The learned Assistant Government Pleader could not persuade this Court to take a different view of the matter on amount of compensation than the one taken by the Reference Court and therefore, the appeals which lack merits deserve to be dismissed.

10. For the foregoing reasons, the appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

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